HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 294 of 2004 (M/S)
Ashutosh Raturi
S/o Late Sh. Iswari Datt Raturi
VS
Additional District Judge/F.T.C.
Uth. Dehradun District Dehradun

Approved for reporting
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~~Not approved for reporting~~

Date of decision 4.8.2004

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ petition No. 294 (MS) of 2004

Ashutosh Raturi
S/o Later Sh. Ishwari Dutt Raturi
R/o 37 Akhara Mohalla, Dehradun
At present R/o Narendra Nagar,
District Tehri Garhwal. ..... Petitioner

Vs

Additional District Judge /F.T.C
Vth Dehradun, District Dehradun
And others. ..... Respondents

Counsel for the petitioner Sh.Sandeep Tandon
Counsel for the respondent Sh. B.P. Nautiyal

Dated:- 4-8-2004

Hon'ble Rajesh Tandon J.

Heard Sh. Sandeep Tandon learned counsel for the petitioner and Sh. B.P. Nautiyal counsel for the respondents.

By the present writ petition the petitioner has prayed for the issue of a writ, order or direction in the nature of certiorari quashing the impugned orders dt. 4-3-2004 and 6-11-1996 (Annexure No. 10 and 7) passed by respondent No. 1 and 2.

Brief facts giving rise to the present writ petition are that suit No. 148 of 1990 was filed by the petitioner under section 13 (1) (iii) of the Hindu marriage Act. Ex-parte order was passed decreeing the suit in favour of the petitioner on 7-8-1991.

Counsel for the applicant has submitted that immediately thereafter he was married on 25-11-1991 and two daughters were born.

On 13-12-1991 the application under order 9 Rule 13 of the Code of Civil Procedure was filed by Smt. Shashi Raturi

praying for restoration of the case along with the application under Section 5 of the limitation Act. The Trial Court was satisfied with the cause of non appearance of the respondent and as such the application under order 9 Rule 13 of the Code of Civil Procedure was allowed. The petitioner has preferred the revision before the Additional District Judge. The revisional court has also dismissed the revision. Both the courts below have recorded the finding that the cause shown was sufficient.

In view of the above, I am not inclined to interfere with the order 9 Rule 13 of the Code of Civil Procedure passed on the application of order.

Liberty is given to the petitioner to argue before the family judge with regard to the subsequent event with regard to the marriage of the respondent having taken place after the expiry of limitation i.e. during the interval between the exparte decree and the filing of the application under order 9 Rule 13 of the Code of Civil Procedure

I find no infirmity in the order passed by the courts below.

However, while deciding the case he will look into the facts referred above.

Subject to the aforesaid observation, the writ petition is dismissed.

Dated:- 4-8-2004 **(RAJESH TANDON J.)**

M.K.